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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/694,927 | 10/24/2000 | Victor T. Huang | 8863.73US01 | 1712 |

23552 7590 12/04/2001

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EXAMINER

TRAN LIEN, THUY

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1761

DATE MAILED: 12/04/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/694,927

Applicant(s)
Huang et al.

Examiner
Lien Tran

Art Unit
1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Sept. 14, 2001
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-14, and 16-17 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-14, and 16-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-101) Paper No(s). _____ 20) ☐ Other: _____

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Art Unit: 1761

1. The 112 second paragraph rejection of claims 1-27 is hereby withdrawn.
2. Claims 1-4, 7-14 and 16-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Savage for the same reason set forth in paragraph 4 of the previous office action.
3. In the response filed Sept. 14, 2001 applicant argues the recipe disclosed in Savage is a conventional recipe and the corn syrup solids used is a typical corn syrup solids having a DE of 36 to 43 because Savage does not recite the dextrose equivalent of the corn syrup solids used. The argument is not persuasive. Applicant's conclusion that the corn syrup solids used in Savage must have a DE of 36-43 is not supported by factual evidence. It is well known in the art that corn syrup solids having varying DE values are available. Savage's recitation of corn syrup solids without a restriction on the DE value would have suggested to one skilled in the art that any type of corn syrup solids can be used and the selection of the DE value would have been an obvious matter of choice depending on the degree of sweetness desired. It is well known that the DE value relates to the degree of sweetness. It would have been obvious to choose a high DE if a very sweet product is desired or a very low DE if a low degree of sweetness is desired. Furthermore, applicant discloses on page 7 of the specification that "high molecular weight starch hydrolysate generally have a low DE range such as about 1-50 DE, typical for use in the present invention the DE of the starch hydrolysates is about 1 to 42". Thus, even if applicant's argument that the corn syrup solids used in Savage must have a DE 36-43 is true, the corn syrup solids do not differ from what is allowed in the claimed product because the DE value falls within the disclosed range. Applicant further argues it is the starch hydrolysate having a DE of 1-20 that

Art Unit: 1761

allows the product to achieve the recited modulus. This argument is contrary to what is disclosed in the specification because the specification disclosed hydrolysate having DE of about 1 to 42 can be used.

4. Applicant's arguments filed Sept. 14, 2001 have been fully considered but they are not persuasive.


5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

November 29, 2001


LIEN TRAN
PRIMARY EXAMINER
